

## Our Flag Stands for Freedom

Proposed amendment to ban flag burning would violate American ideals.

BY JOHN CONYERS JR.

**F**or the fifth time in the last five Congresses, the House of Representatives has passed a constitutional amendment banning flag desecration. That's nothing new. What is new is that this year, as a result of the GOP's recent gains in Senate seats, there is a very real chance there may be the two-thirds votes necessary to pass the amendment on to the states. And that would be a tragic mistake for our nation.

Few Americans favor burning the flag. I deplore desecration of the flag in any form. However, the constitutional amendment goes against the very ideals that the flag represents. It elevates a symbol of freedom over freedom itself. If passed, it would represent the first time in our nation's history that the people's representatives voted to alter the Bill of Rights to *limit* the freedom of speech.

While some may say that this amendment is not the end of our First Amendment liberties, it may be the beginning of the end. By limiting the scope of free speech protections, we are setting a most dangerous precedent. If we open the door to criminalizing constitutionally protected expression related to the flag, where do we draw the line to stop further efforts to censor speech? And once we decide that limiting freedom of speech is acceptable, restrictions on freedom of the press and freedom of religion cannot be far behind.

### THE TRUE TEST

It has been said that the true test of any nation's commitment to freedom of expression lies in its ability to protect unpopular expression, such as flag desecration. As Justice

Oliver Wendell Holmes Jr. wrote in 1929, the Constitution protects not only freedom for the thought and expression we agree with, but "freedom for the thought we hate."

The proposed amendment comes in response to two Supreme Court decisions, *Texas v. Johnson* in 1989 and *United States v. Eichman* in 1990. Ever since, Congress has been tempted to "show the Court who's boss" by amending the Constitution to outlaw a whole range of flag-related expression.

But if we do, we will not only be carving an awkward exception into a document designed to last for the ages but we will be undermining the very constitutional structure that our founding fathers designed to protect our rights. In effect, we will be elevating and glorifying the fringe elements who disrespect the flag and what it stands for, while denigrating the constitutional vision of James Madison and Benjamin Franklin.

Concern about the tyranny of the majority led the Framers to create an independent judiciary free of political pressure to ensure that the legislative and executive branches would honor the rights of the minority. A constitutional amendment banning flag desecration upsets this careful balance. The fact that this time around Congress would consider the first ever amendment to the Bill of Rights without so much as a hearing in the House makes the proposed amendment all the more objectionable.

Madison warned against using the amendment process to correct every perceived constitutional defect, particularly concerning issues that inflame public passion. Unfortunately, there is no better illustration of Madison's concern than the flag amendment.

### MORE FLAG DESECRATION?

History has proved that efforts to legislate respect for

the flag serve only to increase flag-related protest. A constitutional amendment will no doubt increase such protests many times over.

Almost as significant as the damage this resolution would do to our own Constitution is the harm it will inflict on our international standing in the area of human rights. Demonstrators who ripped apart the flags of communist regimes before the fall of the Iron Curtain committed crimes against their country's laws, yet freedom-loving Americans applauded their brave actions. Yet if we pass this amendment, we will be aligning ourselves with autocratic regimes such as those in Iran and diminish our own moral stature as a protector of freedom in all of its forms.

For those who believe a constitutional amendment will honor the flag, I would urge them to read the Supreme Court's decision in *Texas v. Johnson*. The majority wrote:

"The way to preserve the flag's special role is not to punish those who feel differently about these matters. It is to persuade them that they are wrong. . . . We can imagine no more appropriate response to burning a flag than waving one's own, no better way to counter a flag burner's message than by saluting the flag. . . . We do not consecrate the flag by punishing its desecration, for in doing so we dilute the freedom that this cherished emblem represents."

We can truly honor the flag by showing that we as a nation have the strength to remain true to our forefathers' constitutional ideals and defend our citizens' right to express themselves, even when we vehemently disagree with their method of expression.

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